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EXPORT ADMINISTRATION ACT  
AMENDMENTS OF 1974

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REPORT  
OF THE  
COMMITTEE ON BANKING, HOUSING  
AND URBAN AFFAIRS  
UNITED STATES SENATE  
TO ACCOMPANY  
S. 3792



JULY 22, 1974.—Ordered to be printed

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## EXPORT ADMINISTRATION AMENDMENTS OF 1974

JULY 22, 1974.—Ordered to be printed

Mr. STEVENSON, from the Committee on Banking, Housing and Urban Affairs, submitted the following

### REPORT

[To accompany S. 3792]

The Committee on Banking, Housing and Urban Affairs favorably reports a Committee bill, S. 3792, to amend and extend the Export Administration Act of 1969, as amended ("the Act").

#### HISTORY OF THE LEGISLATION

S. 3282 was introduced in the Senate on April 1, 1974 and referred to the Committee. The International Finance Subcommittee held extensive hearings on export controls and United States international economic policy on April 2nd, 5th, 23rd, 25th, 26th, and May 2nd and 3rd, 1974. X

On June 12, 1974, the Committee met in open markup to consider all export control proposals pending before the Committee, including S. 3282 and an alternative Subcommittee proposal. After amending the Subcommittee proposal, the Committee agreed to report the measure with modifications as a new Committee bill.

#### EXPLANATION OF THE LEGISLATION

##### SHORT TITLE

Section 1 provides that the bill, when enacted, may be cited as the Export Administration Amendments of 1974.

##### SHORT SUPPLY POLICY

Section 2 would amend section 3(2) (A) of the Act by striking the word "abnormal." Section 3(2) (A) sets forth Congressional policy on the use of export controls in situations of short domestic supply. As amended, it would read as follows:

(1)

It is the policy of the United States to use export controls (A) to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of (abnormal) foreign demand . . .

This change was proposed by the Committee in H.R. 8547 in October, 1973. As explained in the Committee report on H.R. 8547, the purpose of the amendment is as follows:

In the past, one of the impediments to effective use of export controls has been the need to show that the foreign demand which produced an excessive drain of scarce materials and serious inflation was "abnormal." The term "abnormal" suggested the need to show, by reference to some earlier period, that the pattern or magnitude of foreign demand had changed significantly. However, determination of an appropriate reference point for assessing whether foreign demand is normal or abnormal is impossible to do with any degree of certainty since trade patterns fluctuate. Moreover, in some situations, an excessive drain of scarce materials and serious inflation can result even if foreign demand levels have not changed significantly. This could occur where total supply declines for one reason or another. In that circumstance, even if foreign demand is at pre-existing levels, there can be an excessive drain of scarce materials and serious inflation.

Under the change proposed by the Committee in this bill, it will no longer be necessary for foreign demand to be abnormal before export controls may be imposed. Instead, controls may be used when foreign demand results or will result in both an excessive drain of scarce materials and serious inflation. However, as at present, foreign demand must be a significant factor in present or prospective inflation in the economy before controls may be imposed.

The Committee also wishes to reiterate its intent that the authority contained in the Export Administration Act be used flexibly. As pointed out in the Report on H.R. 8547,

[T]he Committee believes that the Executive Branch in the past has taken too rigid a view of that authority. It is not necessary that there presently be in existence a drain of scarce materials and serious domestic inflation. The Act expressly states that it is the policy of the United States to use export controls "to the extent necessary to *protect* the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of abnormal foreign demand . . ." Accordingly, it is not necessary that the economy actually be damaged before action can be taken. Congress intends that the Executive Branch anticipate and guard against the development of adverse situations and instructs the Executive Branch to exercise the authority contained in the Export Administration Act of 1969 and other laws in such a manner as to ensure that export controls do not have to be imposed in the tardy and hastily conceived manner of last summer [when an embargo was imposed on soybean exports.] Such

action generated unnecessary ill will both at home and abroad.

#### MONITORING

Section 3 would amend sections 4, 5, and 10 of the Act to improve the ability of the government to fulfill the policies of the Export Administration Act. Section 3 would require the Secretary of Commerce to monitor exports under specified conditions, to publish reports on such monitoring, to prepare analyses of the economic impact of shortages and increased prices of materials subject to monitoring, and to require other departments and agencies of the Federal government to cooperate in rendering necessary advice and information.

##### *Materials covered and conditions*

Section 3(a) would add a new subsection 4(c) to the Act. Paragraph (1) of the new subsection would require the Secretary of Commerce to monitor exports and contracts for exports of all materials not subject to the reporting requirements of section 812 of the Agricultural Act of 1970. Monitoring must occur when the volume of exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage and such price increase or shortage has, or may have, a serious adverse impact on the economy.

Information furnished the Secretary under this subsection is to be confidential except as it is required to be published in aggregate form in the reports prepared by the Secretary under paragraph 2 of this subsection.

##### *Weekly reports*

Paragraph 2 of new subsection 4(c) would require that, to the extent practicable, information obtained through monitoring be aggregated and set forth in weekly reports. Such reports must describe actual and anticipated exports of the monitored material, the destination by country; and domestic and worldwide price, supply and demand. The Secretary of Commerce may make monthly reports if he determines there is insufficient information to justify weekly reports, or if weekly reports are otherwise impracticable.

##### *Semiannual reports*

Section 3(b) (2) would add a new subsection 10(b) to the Act to require that the quarterly report for the first quarter of 1975 and every semi-annually thereafter include summaries of the information contained in the reports required by new subsection 4(c). In addition, such quarterly reports are to contain the Secretary's analysis of the impact on the economy and world trade of shortages or increased prices for materials subject to monitoring under the Act, (2) the probable duration of such shortages or increased prices, (3) the worldwide supply of such materials, and (4) actions taken by other countries in response to such shortages or increased prices.

The purpose of this subsection is to expand and improve the Department of Commerce's analysis of developing short supply situations so that the government will be in a position to take effective action before a crisis develops. Such analysis should also be used to devise alternative strategies to export controls. For example, if export demand produces serious domestic price increases or shortages, the gov-

ernment should tailor its programs and activities so as to encourage the development of alternative sources of supply both at home and abroad.

A wide variety of tools are available to the government under existing law to accomplish these objectives. Government tax and export financing policies can have a substantial impact. In addition, cooperation with other nations can help to relieve the pressures of export demand. International cooperation can also improve access to sources of supply. A prerequisite to such action is the careful analysis called for by this section.

Concern has been expressed that publication of the Secretary's analysis of the probable duration of shortages or increased prices might encourage speculation by signaling the impending imposition or expected duration of any export controls. Concern has also been expressed that the information available to the Secretary may not be sufficiently accurate or reliable to permit competent analysis.

The Committee is sensitive to the problem but believes that the ready availability of accurate information about shortages, prices, and supply can actually reduce the uncertainty which gives rise to speculation. The Committee also believes that adequate steps can be taken to satisfy the expressed concerns. The analysis which is essential to effective action to alleviate shortages need not convey information about the timing, the kind, or the duration of export controls. Indeed, the Committee is aware that private sector responses to predictions about export controls can have adverse domestic supply consequences. It, therefore, does not expect the Secretary to disclose information which indicates the Government's export control intentions. In addition, where the information available to the Secretary is sufficiently unreliable to permit competent analysis, or where publication of analyses based on such information would have serious adverse consequences due to highly volatile markets for the material involved, the Committee expects the Secretary to so indicate in his report and does not expect him to proceed further with any analysis at that time.

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economy and world trade of shortages or increased prices, for such commodities, the probable duration of such shortages or increased prices, the worldwide supply of such commodities, and actions taken by other nations in response to such shortages or increased prices.

Since agricultural commodities are a major U.S. export, such analysis is essential. The need for an embargo on soybean exports in the summer of 1973 was in part the result of a failure to foresee increased export demand for soybeans. It also reflected a failure to foresee the consequences which would follow from an abrupt termination of U.S. soybean supplies to the rest of the world, especially to established trading partners. Increased worldwide demand for wheat in the face of dwindling carryover stocks raises similar problems. The analysis required by this subsection is intended to assist the Government in devising appropriate policies before a crisis materializes and before options short of a complete embargo are foreclosed.

To facilitate the efforts of the Secretary of Commerce this subsection makes it clear that the Secretary of Agriculture is to cooperate fully with the Secretary of Commerce in making available all the information he requires to complete the analyses.

### *Consultation*

Section 3(c) would amend subsection 5(a) of the Act by making it clear that the consultation provisions of the Act apply to determinations regarding which exports are to be monitored, as well as to determinations concerning which exports are to be controlled.

Subsection 5(a) would also be amended to require all executive departments and independent agencies to cooperate fully in rendering advice and information to those charged with making determinations under the Act.

### INTERNATIONAL COOPERATION TO SECURE ACCESS TO SUPPLIES

Section 4 would amend the findings and policy provisions of the Act in order to deal with the growing problems of politically and economically motivated restrictions on access to supplies. When imposed on essential raw materials such as oil, such restrictions can seriously jeopardize world-wide economic growth and political and social stability. Regardless of the material involved, such restrictions signal a breakdown in the international trading system. The purpose of this section is to recognize the dangers and to establish U.S. policy firmly in opposition to unreasonable restrictions on access to supplies and firmly in favor of international cooperation to combat such restrictions.

#### *Congressional findings*

Section 4(a) would add to section 2 of the Act a Congressional finding that unreasonable restrictions on access to supplies can cause political and economic instability, interfere with free international trade, and retard economic growth and development. The Committee expects the President and the Secretary of Commerce to take this new finding into account in implementing the Act and evaluating export restrictions imposed by United States as well as other countries. In both the imposition of export controls on U.S. materials and in responding to export controls established by other nations, the serious dangers which unreasonable export restrictions present for all nations should play an important role in the President's deliberations.

#### *U.S. cooperation with all nations*

Section 4(b) would amend section 3(3) (A) of the Act by striking the words "with which the United States has defense commitments." The purpose of this amendment is to make it United States policy to cooperate with *all* nations, not only those with which it has defense commitments, in assuring reasonable access to world supplies.

#### *Declaration of policy*

Section 4(c) would amend section 3(5) of the Act to provide that it is United States policy to foster international rules and institutions which will assure reasonable access to world supplies by all nations. Internationally agreed-upon rules, implemented through international institutions, present the best hope for dealing with growing problems of resource scarcity. The Committee expects that earnest efforts on the part of the President and the Secretary to develop and encourage such international arrangements will form a basic part of official United States policy.

## HIGH TECHNOLOGY EXPORTS

Section 5 would amend sections 4 and 5 of the Act in order to reduce delays in the processing of license applications for materials subject to national security export controls and to improve the functioning of the technical advisory committees.

*Licensing processing*

Section 5(a) adds a new subsection (g) to section 4 of the Act to require that applications for licenses to export goods and technology subject to national security controls under the Act be approved or disapproved within 90 days after submission of the application. If additional time for decision is required, the applicant must be informed of the reasons for the delay. The applicant must also be given an estimate of when a decision will be made.

This provision was added because of the increasing delays experienced by exporters seeking final action on license applications for exports of high technology goods and services. Such delays cause uncertainty, and ultimately impede United States' export potential. By requiring a decision within ninety days, with reasons to be given if additional time is required, the Committee expects the situation to be rectified.

The Committee recognizes that some improvement has been made by the Department of Commerce in the processing of export license applications. Nevertheless, the Committee is disturbed by testimony that the other departments and agencies have failed to exercise their export licensing responsibilities in the inter-agency review process with adequate dispatch and that insufficient facilities and personnel are allocated to the administration of export restrictions both in the Department of Commerce and in the Department of Defense. It notes that while the volume of export license applications has risen, the number of personnel employed by the Office of Export Administration has dropped and that the number of Defense Department personnel involved in high technology export controls has remained the same. The Committee is also aware that some of the Commerce Department personnel who usually work on high technology export applications have become involved in the administration of short supply controls. It also appears that export licensing officers do not have sufficient access to computers and other management aids to expedite license applications. As a result, there are unnecessary delays in the processing of export license applications.

The Committee believes that the Department of Commerce, with the cooperation of other agencies and departments, can make further improvements in its license application procedure to ensure that decisions are made promptly and fairly and with full recognition of the burdens placed on American business by unnecessary delays in the decision-making process. The Committee directs the Secretary of Commerce to eliminate unnecessary delays by taking all appropriate steps, including, if necessary, the hiring of additional staff. In addition, the Secretary should bring to the attention of other Administration officials any inadequacies in other departments which contribute to delay.

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as well as other appropriate government departments and agencies should serve on the technical advisory committees established by this



paragraph. The Committee believes that the statutory inclusion of these agencies is necessary since the Department of Defense and State, along with the Department of Commerce, are the major agencies involved in the formulation of national security policy.

#### *Report to Congress*

Section 5(d) would direct the Secretary of Commerce to report, within a year after the enactment of this bill, on the steps he has taken to expedite the processing of licensing applications as required by new paragraph 4(g) of the Act.

#### *Disclosure of information*

Section 5(c) would add a new paragraph to subsection 5(c) of the Act to require the Secretary of Commerce, in conjunction with other departments and agencies involved in the administration of export controls, to disclose to the technical advisory committees information on the reasons for export controls which are in effect or are contemplated for the material within each committee's purview. This amendment was adopted because the Committee received testimony that the technical advisory committees are frequently handicapped by a lack of adequate information. Without adequate information about the reasons for export controls which they are expected to review, the technical advisory committees are unable to perform fully the functions contemplated for them by the Congress. The Committee expects the Executive Branch to rectify the situation, consistent of course, with national security considerations.

#### OPPORTUNITY TO COMMENT ON LICENSING

Section 6 would amend subsection 5(b) of the Act by adding a new paragraph which requires the Secretary of Commerce to give interested parties an opportunity to comment when export controls are imposed for short supply purposes. The provision requires the Secretary to publish his invitation to comment in the Federal Register and gives interested parties 15 days to submit written comments. The purpose is to give the Secretary, in the least cumbersome way possible, all relevant information on the impact of any export controls which he may have imposed and their method of implementation. It is expected that he will carefully review all such information and make such export control adaptations as may be indicated.

#### TECHNICAL AND CONFORMING CHANGES

Section 7 would amend redesignated subsection 4(d) of the Act (formerly subsection 4(c)) to make it clear that no special authority is necessary to carry on export transactions unless the President has promulgated contrary regulations to implement the policies set forth in section 3 of the Act. The existing provision was defective because it did not refer to all the policy reasons for imposing export controls set forth in section 3.

#### HARDSHIP RELIEF

Section 8 would add a new section 4A which provides a procedure by which certain persons adversely affected by export controls may petition the Secretary of Commerce for exemption from controls. The

intent is to provide an opportunity for relief under prescribed circumstances for persons who have historically exported materials made subject to export controls. The provision codifies existing hardship procedures under Department of Commerce regulations.

#### *Eligibility*

New subsection 4A(a) would describe those persons eligible to petition for relief. They consist of any person engaged in a domestic business which utilizes products obtained from abroad but which are made from United States materials made subject to export controls as well as all other persons who have historically exported materials subject to the controls. The need for a hardship relief opportunity may be most acute where domestic companies are deprived of critical components or materials which are historically manufactured outside the United States from commodities exported from the United States. Hardship relief may also be appropriate, however, for persons historically engaged in the export of a material made subject to controls. The particular circumstances of each case will govern, and relief may be granted only after consideration of the factors described below.

#### *Procedure*

New subsection 4A(b) would set forth the applicable procedure. Within 30 days after receiving the petition, the Secretary of Commerce is required to notify the petitioner in writing of his decision, together with a statement of reasons.

The Secretary may grant the exemption subject to any conditions he considers appropriate.

#### *Factors to be considered in granting relief*

New subsection 4A(c) would set forth the specific factors the Secretary of Commerce is expected to take into account in making his decision, in addition to any other factors he considers relevant. They are: (i) the adverse affect of the controls on domestic employment, (ii) the probability of insolvency of the petitioner due to the controls, (iii) the fact that the controls may interfere with the import of a product essential to the domestic business of the petitioner or some other party or may unduly disrupt a domestic business, (iv) the burden or adverse effect of the controls on a domestic business which manufactures in the United States a product which includes a critical component produced outside the United States from a commodity subject to controls.

#### INTERAGENCY REVIEW

Section 9 would add a new subsection 4(h) (1) section 4 of the Act to establish review procedures for exports of goods and technology to "controlled countries" (defined to mean Communist countries as specified in section 620(f) of the Foreign Assistance Act, except for Yugoslavia and Rumania. This section is a modification of an amendment to the Military Procurement Authorization bill adopted by the Senate on June 11, 1974. The purpose is to insure that the Department of Defense has an adequate opportunity to consider the military and national security implications of exports to Communist Countries and that the Congress has a voice in the decision in the event of White House and Department of Defense disagreement.

Paragraph (h) (1) contains a Congressional finding that the defense posture of the United States may be compromised if goods and technology are exported to controlled countries without an adequate assessment of their impact on the military capability of the recipient country. It also reinforces existing practice by specifically authorizing the Secretary of Defense to review any such proposed export and to recommend against it if he determines that it will significantly increase the military capability of such country.

Under paragraph (h) (2), the Secretary of Defense must be notified of all requests for licenses for exports to controlled countries. No license may be issued until thirty days after the Secretary of Defense has been notified and the time for Presidential and Congressional review, if applicable, has been exhausted. If the Secretary determines that the export would significantly improve the military capability of the recipient country, he must recommend to the President that he disapprove the export. Alternatively, the Secretary may notify the appropriate export control office or agency that he will interpose no objection, or that he will interpose no objection if appropriate conditions designed to achieve the purposes of the Act are imposed.

If the President notifies the administering office or agency within thirty days after receiving the recommendation of the Secretary of Defense that he disapproves the export, the export is prohibited. But, under new paragraph (h) (3), if the President modifies or overrules the Secretary of Defense, he must submit his decision to review by the Congress. Congress has a period of thirty days of continuous session of both Houses thereafter to disapprove the President's decision by majority vote.

Paragraph (h) (4) requires that in determining whether exports will significantly increase the military capability of a controlled country, the Secretary of Defense must take into account all potential end uses, not just the immediately intended use, as well as the likelihood of an end use other than that indicated by the export applicant.

Paragraph (h) (5) requires that the removal of any category of goods or technology from an export license requirement or other authorization for export to a controlled country must be approved by the President.

Paragraph (h) (6) permits the President to disagree to modifications of so-called COCOM international lists, if he determines that such modifications are likely to result in a significant increase in the military capability of any controlled country.

Paragraph (h) (7) defines the terms "goods and technology", "export control office", and "controlled country."

Paragraph (h) (8) requires the Secretary of Defense to submit a semi-annual report on the administration and implementation of this section.

#### EXPORT FEES AND LICENSES

Section 10 would amend section 4 of the Act to add a new subsection (i) which authorizes the President to use license fees or the auction of export licenses as a means of carrying out the purposes of the Act. License fees and license auctioning will constitute one of the many tools available to the Secretary of Commerce when circumstances justify the imposition of export controls.

Use of license fees and auctions as a means of export control can overcome the difficulties associated with allocations under present

short-supply export control programs. On the other hand, the Committee is aware that the use of license fees and auction systems can have adverse effects on small business exporters and underdeveloped nations. Therefore, the Committee wishes to stress that this new authority is permissive, not mandatory. The Committee does not intend its use where it would work a hardship on small businesses. The Committee also does not intend its use where it would deprive developing countries of access to adequate food supplies. In these, and perhaps other unique circumstances, the Secretary of Commerce should continue to rely on the existing practice of allocating export licenses among exporters and distributing export allocations on a country-by-country basis in order to insure an equitable allocation of American supplies of scarce goods throughout the world. In doing so, however, the Committee expects market prices to prevail insofar as possible.

By appropriate modification, it may be possible to use export fees and license auctioning without working such undue hardship or deprivation. In the case of small businesses, for example, a proportion of available licenses could be set aside for allocation exclusively to small businesses or a delay in the time for payment could be arranged in order to reduce any financial burden. In the case of developing countries, reduced license fees or specific exemption from any fees may be possible. In either cases, before implementing a license fee or auction system, the Secretary should devise ways to satisfy the special needs of small businesses and developing countries.

The Committee is aware of the potential Constitutional problem presented by Article 1, section 9, clause 5 of the Constitution which provides that "No tax or duty shall be paid on Articles exported from any State." However, the Committee believes that a license fee or auctioning system can be structured under appropriate circumstances to avoid Constitutional infirmity. Under no circumstances are license fees or auctioning to be used as a revenue raising measures; their purpose is to provide a convenient and flexible way of administering an export control program where the Secretary determines that their use would simplify and improve export control operations. It is expected that the Secretary will take the necessary steps to minimize the possibility of Constitutional challenge.

#### EXPIRATION DATE

Section 11 could extend the authority to impose export controls under the Act for three more years from July 30, 1974 to June 30, 1977.

## CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (new matter is printed in *italic*, existing law in which no change is proposed is shown in *roman*):

### Export Administration

#### a. The Export Administration Act of 1969, as amended

Public Law 91-184 [H.R. 4293], 83 Stat. 841, approved December 30, 1969, as amended by Public Law 92-284 [S.J. Res. 218], 86 Stat. 133, approved April 29, 1972; and by Public Law 92-412 [S. 3726], 86 Stat. 644, approved August 29, 1972

AN ACT To provide for continuation of authority for regulation of exports

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Act of 1969".

#### FINDINGS

SEC. 2. The Congress makes the following findings:

(1) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(2) The unrestricted export of materials, information, and technology without regard to whether they make a significant contribution to the military potential of any other nation or nations may adversely affect the national security of the United States.

(3) The unwarranted restriction of exports from the United States has a serious adverse effect on our balance of payments, particularly when export restrictions applied by the United States are more extensive than export restrictions imposed by countries with which the United States has defense treaty commitments.

(4) The uncertainty of policy toward certain categories of exports has curtailed the efforts of American business in those categories to the detriment of the overall attempt to improve the trade balance of the United States.

(5) *Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.*

## DECLARATION OF POLICY

## SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States both (A) to encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest, and (B) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States.

(2) It is the policy of the United States to use export controls (A) to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of [abnormal] foreign demand, (B) to the extent necessary to further significantly the foreign policy of the United States and to fulfill its international responsibilities and (C) to the extent necessary to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States.

(3) It is the policy of the United States (A) to formulate, re-formulate, and apply any necessary controls to the maximum extent possible in cooperation with all nations [with which the United States has defense treaty commitments.] and, (B) to formulate a unified trade control policy to be observed by all such nations.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, [and] (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States, and (C) *to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.*

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular articles, materials, or supplies, including technical data or other information, to United States export controls should be subjected to review by consultation with representatives of appropriate United States Government agencies and qualified experts from private industry.

## AUTHORITY

SEC. 4. (a)(1) The Secretary of Commerce shall institute such organizational and procedural changes in any office or division of the Department of Commerce which has heretofore exercised functions

relating to the control of exports and continues to exercise such controls under this Act as he determines are necessary to facilitate and effectuate the fullest implementation of the policy set forth in this Act with a view to promoting trade with all nations with which the United States is engaged in trade, including trade with (A) those countries or groups of countries with which other countries or groups of countries having defense treaty commitments with the United States have a significantly larger percentage of volume of trade than does the United States, and (B) other countries eligible for trade with the United States but not significantly engaged in trade with the United States. In addition, the Secretary shall review any list of articles, materials or supplies, including technical data or other information, the exportation of which from the United States, its territories and possessions, was heretofore prohibited or curtailed with a view to making promptly such changes and revisions in such list as may be necessary or desirable in furtherance of the policy, purposes, and provisions of this Act. The Secretary shall include a detailed statement with respect to actions taken in compliance with the provisions of this paragraph in the second quarterly report (and in any subsequent report with respect to actions taken during the preceding quarter) made by him to the Congress after the date of enactment of this Act pursuant to section 10.

(2) The Secretary of Commerce shall use all practicable means available to him to keep the business sector of the Nation fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging the widest possible trade.

(b) (1) To effectuate the policies set forth in section 3 of this Act, the President may prohibit or curtail the exportation from the United States, its territories and possessions, of any articles, materials, or supplies, including technical data or any other information, except under such rules and regulations as he shall prescribe. To the extent necessary to achieve effective enforcement of this Act, these rules and regulations may apply to the financing, transporting, and other servicing of exports and the participation therein by any person. Rules and regulations may provide for denial of any request or application for authority to export articles, materials, or supplies, including technical data, or any other information, from the United States, its territories and possessions, to any nation or combination of nations threatening the national security of the United States if the President determines that their export would prove detrimental to the national security of the United States, regardless of their availability from nations other than any nation or combination of nations threatening the national security of the United States, but whenever export licenses are required on the ground that considerations of national security override considerations of foreign availability, the reasons for so doing shall be reported to the Congress in the quarterly report following the decision to require such licenses on that ground to the extent consideration of national security and foreign policy permit. The rules and regulations shall implement the provisions of section 3(5) of this Act and shall require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in that section must report this fact to the Secretary

of Commerce for such action as he may deem appropriate to carry out the purpose of that section.

(2) the Secretary of Commerce, in cooperation with appropriate United States Government departments and agencies and the appropriate technical advisory committees established under section 5(c), shall undertake an investigation to determine which articles, materials, and supplies, including technical data and other information, should no longer be subject to export controls because of their significance to the national security of the United States. Notwithstanding the provisions of paragraph (1), the President shall remove unilateral export controls on the export from the United States of articles, materials, or supplies, including technical data or other information, which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, except that any such control may remain in effect if the President determines that adequate evidence has been presented to him demonstrating that the absence of such a control would prove detrimental to the national security of the United States. The nature of such evidence shall be included in the special report required by paragraph (4).

(3) In conducting the investigation referred to in paragraph (2) and in taking the action required under such paragraph, the Secretary of Commerce shall give priority to those controls which apply to articles, materials, and supplies, including technical data and other information, for which there are significant potential export markets.

(4) Not later than nine months after the date of enactment of the Equal Export Opportunity Act, the Secretary of Commerce shall submit to the President and to the Congress a special report of actions taken under paragraphs (2) and (3). Such report shall contain—

(A) a list of any articles, materials, and supplies, including technical data and other information, which are subject under this Act to export controls greater than those imposed by nations with which the United States has defense treaty commitments, and the reasons for such greater controls; and

(B) a list of any procedures applicable to export licensing in the United States which may be or are claimed to be more burdensome than similar procedures utilized in nations with which the United States has defense treaty commitments, and the reasons for retaining such procedures in their present form.

(c) (1) *To effectuate the policy set forth in section 3(2) (A) of this Act, the Secretary of Commerce shall monitor exports, and contracts for exports, of any article, material, or supply (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970).*

*when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase, or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.*

(2) *The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with re-*



spect to each article, material, or supply monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(d) Nothing in this Act or the rules or regulations thereunder shall be construed to require authority or permission to export, except where required by the President to effect the policies set forth in section 3 of this Act.

(e) The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may deem appropriate.

(f) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by him to be in excess of the requirements of the domestic economy, except to the extent the President determined that such exercise of authority is required to effectuate the policies set forth in clause (B) or (C) of paragraph (2) of section 3 of this Act.

(g) Any export license application required by the exercise of authority under this Act to effectuate the policies of section 3(1)(B) or 3(2)(C) shall be approved or disapproved not later than 90 days after its submission. If additional time is required, the Secretary of Commerce or other official exercising authority under this Act shall inform the applicant of the circumstances requiring such additional time and give an estimate of when his decision will be made.

(h) (1) The Congress finds that the defense posture of the United States may be seriously compromised if the Nation's goods and technology are exported to a controlled country without an adequate and knowledgeable assessment being made to determine whether export of such goods and technology will significantly increase the military capability of such country. It is the purpose of this section to provide for such an assessment and to authorize the Secretary of Defense to review any proposed export of goods or technology to any such country and, whenever he determines that the export of such goods or technology will significantly increase the military capability of such country, to recommend to the President that such exports be disapproved.

(2) Notwithstanding any other provision of law, whenever a request for a license or other authority is required by any person to export any goods or technology to any controlled country, the appropriate export control office or agency to whom such request is made shall notify the Secretary of Defense of such request, and such office may not issue any license or other authority pursuant to such request prior to the expiration of the period within which the President may disapprove such export, or prior to the expiration of the period within which the Congress may disapprove an action of the President, if applicable. The Secretary of Defense shall carefully consider all notifications submitted to him pursuant to this subsection and, not later than 30 days after notification of the request, shall—

(A) recommend to the President that he disapprove any request for the export of any goods or technology to any controlled

country if he determines that the export of such goods or technology will significantly increase the military capability of such country;

(B) notify such office or agency that he will interpose no objection if appropriate conditions designed to achieve the purposes of this Act are imposed; or

(C) indicate that he does not intend to interpose an objection to the export of such goods or technology.

If the President notifies such office or agency, within thirty days after receiving a recommendation from the Secretary, that he disapproves such export, no license or other authorization may be issued for the export of such goods or technology to such country.

(3) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense pursuant to this section, the President shall submit to the Congress a statement indicating his decision. The Congress shall have a period of thirty calendar days of continuous session of both Houses after the date on which the statement is transmitted to the Congress to disapprove, by majority vote of both Houses, the action of the President.

(4) In determining whether the export of any goods or technology to any controlled country will significantly increase the military capability of such country, the Secretary of Defense shall take into account all potential end uses, and the likelihood of an end use other than the end use indicated by the applicant for the export of such goods or technology.

(5) Effective on July 1, 1974, the removal of any category of goods or technology requiring an export license or other authorization shall require the approval of the President.

(6) The President is authorized, on behalf of the United States, to disagree to any modification of the so-called COCOM international lists (or interpretations thereof) if he determines that such modification would likely result in a significant increase in the military capability of any controlled country.

(7) As used in this section—

(A) the term “goods and technology” includes but is not limited to—

(i) machinery, equipment, durable goods, and computer software;

(ii) any license or other arrangement for the use of any patent, trade secret, design, or plan;

(iii) the so-called know-how or knowledge of any individual, firm, corporation, or other entity;

(iv) assistance in planning and joint venture arrangements; and

(v) arrangements under which assistance is provided in developing a manufacturing capability, including so-called turnkey arrangements;

(B) the term “export control office” means any office or agency of the United States Government whose approval or permission is required pursuant to existing law for the export of goods or technology; and

(C) the term "controlled country" means a Communist country as defined in section 620 (f) of the Foreign Assistance Act of 1961, except for Yugoslavia and Rumania.

(8) The Secretary of Defense shall submit to the Congress every six months a report on the implementation and administration of this section.

(i) In imposing export controls to effectuate the policy stated in section 3 (2) (A) of this Act, the President's authority shall include, but not be limited to, the imposition of export license fees and the auction of export licenses.

#### PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

SEC. 4A. (a) Any person who, in his domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a commodity historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a commodity, may transmit a petition of hardship to the Secretary of Commerce requesting an exemption from such controls in order to alleviate any hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary of Commerce shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) Not later than 30 days after receipt of any petition under subsection (a), the Secretary of Commerce shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary deems appropriate.

(c) For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from hardship resulting directly or indirectly from the imposition of controls shall reflect the Secretary's consideration of such factors as—

(1) the adverse effect on employment within a region or locality of the United States;

(2) the probability of insolvency of the petitioner;

(3) any interference with the importation of a product which is essential to the petitioner's or other domestic business or which causes undue disruption of the petitioner's or other domestic business;

(4) any burden or other adverse effect such controls impose on a domestic business concern which manufactures or assembles a product which includes a critical component produced outside of the United States in whole or in part from a commodity subject to the controls; and

(5) any other factors which the Secretary deems relevant.

#### CONSULTATION AND STANDARDS

SEC. 5. (a) In determining what shall be controlled [hereunder], or monitored under this Act, and in determining the extent to which exports shall be limited, any department, agency, or official making these determinations shall seek information and advice from the several executive departments and independent agencies concerned with aspects

of our domestic and foreign policies and operations having an important bearing on exports. *Such departments and agencies shall fully cooperate in rendering such advice and information.* Consistent with considerations of national security, the President shall from time to time seek information and advice from various segments of private industry in connection with the making of these determinations.

(b) (1) In authorizing exports, full utilization of private competitive trade channels shall be encouraged insofar as practicable, giving consideration to the interests of small business, merchant exporters as well as producers, and established and new exporters, and provision shall be made for representative trade consultation to that end. In addition, there may be applied such other standards or criteria as may be deemed necessary by the head of such department, or agency, or official to carry out the policies of this Act.

(2) *Upon imposing quantitative restrictions on exports of any article, material, or supply to carry out the policy stated in section 3(2) (a) of this Act, the Secretary of Commerce shall publish a notice in the Federal Register inviting all interested parties to submit written comments within fifteen days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.*

(c) (1) Upon written request by representatives of a substantial segment of any industry which produces articles, materials and supplies, including technical data and other information, which are subject to export controls or are being considered for such controls because of their significance to the national security of the United States, the Secretary of Commerce shall appoint a technical advisory committee for any grouping of such articles, materials, and supplies, including technical data and other information, which he determines is difficult to evaluate because of questions concerning technical matters, worldwide availability and actual utilization of production and technology, or licensing procedures. [Each such committee shall consist of representatives of United States industry and government.] *Each such committee shall consist of representatives of United States industry and government, including the Departments of Commerce, Defense, and State, and when appropriate, other government departments and agencies.* No person serving on any such committee who is representative of industry shall serve on such committee for more than two consecutive years.

(2) It shall be the duty and function of the technical advisory committees established under paragraph (1) to advise and assist the Secretary of Commerce and any other department, agency, or official of the Government of the United States to which the President has delegated power, authority, and discretion under section 4(d) with respect to actions designed to carry out the policy set forth in section 3 of this Act. Such committees shall be consulted with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to any articles, materials, or supplies, including technical data or other information, and including those whose export is subject to multilateral controls undertaken with nations with which the United States has

defense treaty commitments, for which the committees have expertise. Such committees shall also be consulted and kept fully informed of progress with respect to the investigation required by section 4(b) (2) of this Act. Nothing in this subsection shall prevent the Secretary from consulting, at any time, with any person representing industry or the general public regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary of Commerce, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if he determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by him in connection with his duties as a member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the Chairman, unless the Chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this Act. Each such committee shall be terminated after a period of two years, unless extended by the Secretary for additional periods of two years. The Secretary shall consult each such committee with regard to such termination or extension of that committee.

(5) *To facilitate the work of the technical advisory committees, the Secretary of Commerce, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the grouping of articles, materials, and supplies with respect to which that committee furnishes advice.*

#### VIOLATIONS

SEC. 6. (a) Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than \$10,000 or imprisoned not more than one year, or both. For a second or subsequent offense, the offender shall be fined not more than three times the value of the exports involved or \$20,000, whichever is greater, or imprisoned not more than five years, or both.

(b) Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any Communist-dominated nation, shall be fined not more than five times the value of the exports involved or \$20,000, whichever is greater, or imprisoned not more than five years, or both.

(c) The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed \$1,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed.

(d) The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege

granted or to be granted to the person upon whom such penalty is imposed.

(e) Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty, within two years after payment, on the ground of a material error of fact or law in the imposition. Notwithstanding section 1346(a) of title 28 of the United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) Nothing in subsection (c), (d), or (f) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit, or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

#### ENFORCEMENT

SEC. 7. (a) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (27 Stat. 443; 49 U.S.C. 46) shall apply with respect to any individual who specifically claims such privilege.

(c) No department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest.

(d) In the administration of this Act, reporting requirements shall be so designated as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology. A detailed statement with respect to any action taken in compliance with this subsection shall be included in the first quarterly report made pursuant to section 10 after such action is taken.

#### EXEMPTION FROM CERTAIN PROVISIONS RELATING TO ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 8. The functions exercised under this Act are excluded from the operation of sections 551, 553-559, and 701-706, of title 5, United States Code.

#### INFORMATION TO EXPORTERS

SEC. 9. In order to enable United States exporters to coordinate their business activities with the export control policies of the United States Government, the agencies, departments, and officials responsible for implementing the rules and regulations authorized under this Act shall, if requested, and insofar as it is consistent with the national security, the foreign policy of the United States, the effective administration of this Act, and requirements of confidentiality contained in this Act—

(1) inform each exporter of the considerations which may cause his export license request to be denied or to be the subject of lengthy examination;

(2) in the event of undue delay, inform each exporter of the circumstances arising during the Government's consideration of his export license application which are cause for denial or for further examination;

(3) give each exporter the opportunity to present evidence and information which he believes will help the agencies, departments, and officials concerned to resolve any problems or questions which are, or may be, connected with his request for a license; and

(4) inform each exporter of the reasons for a denial of an export request.

## QUARTERLY REPORT

SEC. 10. (a) The head of any department or agency, or other official exercising any functions under this Act, shall make a quarterly report, within forty-five days after each quarter, to the President and to the Congress of his operations hereunder.

(b) (1) *The quarterly report required for the first quarter of 1975 and every second report thereafter shall include summaries of the information contained in the reports required by section 4(c)(2) of this Act, together with an analysis by the Secretary of Commerce of (A) the impact on the economy and world trade of shortages or increased prices for articles, materials, or supplies subject to monitoring under this Act, (B) the probable duration of such shortages or increased prices, (C) the worldwide supply of such articles, materials, and supplies, and (D) actions taken by other nations in response to such shortages or increased prices.*

(2) *Each such quarterly report shall also contain an analysis by the Secretary of Commerce of (A) the impact on the economy and world trade of shortages or increased prices for commodities subject to the reporting requirements of section 812 of the Agricultural Act of 1970, (B) the probable duration of such shortages or increased prices, (C) the worldwide supply of such commodities, and (D) actions being taken by other nations in response to such shortages or increased prices. The Secretary of Agriculture shall fully cooperate with the Secretary of Commerce in providing all information required by the Secretary of Commerce in making such analysis.*

## DEFINITION

SEC. 11. The term "person" as used in this Act includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof.

## EFFECT ON OTHER ACTS

SEC. 12. (a) The Act of February 15, 1936 (49 Stat. 1140), relating to the licensing of exports of tinplate scrap, is hereby superseded; but nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934).

## EFFECTIVE DATE

SEC. 13. (a) This Act takes effect upon the expiration of the Export Control Act of 1949.

(b) All outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action under the Export Control Act of 1949 or section 6 of the Act of July 2, 1940 (54 Stat. 714), shall, until amended or revoked, remain in full force and effect, the same as if promulgated under this Act.



## TERMINATION DATE

SEC. 14. The authority granted by this Act terminates on June 30, **[1974]** 1977, or upon any prior date which the Congress by concurrent resolution or the President by proclamation may designate.



93d CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 93-1024

EXPORT ADMINISTRATION ACT  
AMENDMENTS OF 1974

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REPORT

OF THE

COMMITTEE ON BANKING, HOUSING  
AND URBAN AFFAIRS  
UNITED STATES SENATE

TO ACCOMPANY

S. 3792



JULY 22, 1974.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE  
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## EXPORT ADMINISTRATION AMENDMENTS OF 1974

JULY 22, 1974.—Ordered to be printed

Mr. STEVENSON, from the Committee on Banking, Housing and Urban Affairs, submitted the following

### REPORT

[To accompany S. 3792]

The Committee on Banking, Housing and Urban Affairs favorably reports a Committee bill, S. 3792, to amend and extend the Export Administration Act of 1969, as amended ("the Act").

#### HISTORY OF THE LEGISLATION

S. 3282 was introduced in the Senate on April 1, 1974 and referred to the Committee. The International Finance Subcommittee held extensive hearings on export controls and United States international economic policy on April 2nd, 5th, 23rd, 25th, 26th, and May 2nd and 3rd, 1974.

On June 12, 1974, the Committee met in open markup to consider all export control proposals pending before the Committee, including S. 3282 and an alternative Subcommittee proposal. After amending the Subcommittee proposal, the Committee agreed to report the measure with modifications as a new Committee bill.

#### EXPLANATION OF THE LEGISLATION

##### SHORT TITLE

Section 1 provides that the bill, when enacted, may be cited as the Export Administration Amendments of 1974.

##### SHORT SUPPLY POLICY

Section 2 would amend section 3(2)(A) of the Act by striking the word "abnormal." Section 3(2)(A) sets forth Congressional policy on the use of export controls in situations of short domestic supply. As amended, it would read as follows:

It is the policy of the United States to use export controls (A) to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of (abnormal) foreign demand . . .

This change was proposed by the Committee in H.R. 8547 in October, 1973. As explained in the Committee report on H.R. 8547, the purpose of the amendment is as follows:

In the past, one of the impediments to effective use of export controls has been the need to show that the foreign demand which produced an excessive drain of scarce materials and serious inflation was "abnormal." The term "abnormal" suggested the need to show, by reference to some earlier period, that the pattern or magnitude of foreign demand had changed significantly. However, determination of an appropriate reference point for assessing whether foreign demand is normal or abnormal is impossible to do with any degree of certainty since trade patterns fluctuate. Moreover, in some situations, an excessive drain of scarce materials and serious inflation can result even if foreign demand levels have not changed significantly. This could occur where total supply declines for one reason or another. In that circumstance, even if foreign demand is at pre-existing levels, there can be an excessive drain of scarce materials and serious inflation.

Under the change proposed by the Committee in this bill, it will no longer be necessary for foreign demand to be abnormal before export controls may be imposed. Instead, controls may be used when foreign demand results or will result in both an excessive drain of scarce materials and serious inflation. However, as at present, foreign demand must be a significant factor in present or prospective inflation in the economy before controls may be imposed.

The Committee also wishes to reiterate its intent that the authority contained in the Export Administration Act be used flexibly. As pointed out in the Report on H.R. 8547,

[T]he Committee believes that the Executive Branch in the past has taken too rigid a view of that authority. It is not necessary that there presently be in existence a drain of scarce materials and serious domestic inflation. The Act expressly states that it is the policy of the United States to use export controls "to the extent necessary to *protect* the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of abnormal foreign demand . . ." Accordingly, it is not necessary that the economy actually be damaged before action can be taken. Congress intends that the Executive Branch anticipate and guard against the development of adverse situations and instructs the Executive Branch to exercise the authority contained in the Export Administration Act of 1969 and other laws in such a manner as to ensure that export controls do not have to be imposed in the tardy and hastily conceived manner of last summer [when an embargo was imposed on soybean exports.] Such

action generated unnecessary ill will both at home and abroad.

#### MONITORING

Section 3 would amend sections 4, 5, and 10 of the Act to improve the ability of the government to fulfill the policies of the Export Administration Act. Section 3 would require the Secretary of Commerce to monitor exports under specified conditions, to publish reports on such monitoring, to prepare analyses of the economic impact of shortages and increased prices of materials subject to monitoring, and to require other departments and agencies of the Federal government to cooperate in rendering necessary advice and information.

##### *Materials covered and conditions*

Section 3(a) would add a new subsection 4(c) to the Act. Paragraph (1) of the new subsection would require the Secretary of Commerce to monitor exports and contracts for exports of all materials not subject to the reporting requirements of section 812 of the Agricultural Act of 1970. Monitoring must occur when the volume of exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage and such price increase or shortage has, or may have, a serious adverse impact on the economy.

Information furnished the Secretary under this subsection is to be confidential except as it is required to be published in aggregate form in the reports prepared by the Secretary under paragraph 2 of this subsection.

##### *Weekly reports*

Paragraph 2 of new subsection 4(c) would require that, to the extent practicable, information obtained through monitoring be aggregated and set forth in weekly reports. Such reports must describe actual and anticipated exports of the monitored material, the destination by country, and domestic and worldwide price, supply and demand. The Secretary of Commerce may make monthly reports if he determines there is insufficient information to justify weekly reports, or if weekly reports are otherwise impracticable.

##### *Semiannual reports*

Section 3(b) (2) would add a new subsection 10(b) to the Act to require that the quarterly report for the first quarter of 1975 and semi-annually thereafter include summaries of the information contained in the reports required by new subsection 4(c). In addition, such quarterly reports are to contain the Secretary's analysis of the impact on the economy and world trade of shortages or increased prices for materials subject to monitoring under the Act, (2) the probable duration of such shortages or increased prices, (3) the worldwide supply of such materials, and (4) actions taken by other countries in response to such shortages or increased prices.

The purpose of this subsection is to expand and improve the Department of Commerce's analysis of developing short supply situations so that the government will be in a position to take effective action before a crisis develops. Such analysis should also be used to devise alternative strategies to export controls. For example, if export demand produces serious domestic price increases or shortages, the gov-

ernment should tailor its programs and activities so as to encourage the development of alternative sources of supply both at home and abroad.

A wide variety of tools are available to the government under existing law to accomplish these objectives. Government tax and export financing policies can have a substantial impact. In addition, cooperation with other nations can help to relieve the pressures of export demand. International cooperation can also improve access to sources of supply. A prerequisite to such action is the careful analysis called for by this section.

Concern has been expressed that publication of the Secretary's analysis of the probable duration of shortages or increased prices might encourage speculation by signaling the impending imposition or expected duration of any export controls. Concern has also been expressed that the information available to the Secretary may not be sufficiently accurate or reliable to permit competent analysis.

The Committee is sensitive to the problem but believes that the ready availability of accurate information about shortages, prices, and supply can actually reduce the uncertainty which gives rise to speculation. The Committee also believes that adequate steps can be taken to satisfy the expressed concerns. The analysis which is essential to effective action to alleviate shortages need not convey information about the timing, the kind, or the duration of export controls. Indeed, the Committee is aware that private sector responses to predictions about export controls can have adverse domestic supply consequences. It, therefore, does not expect the Secretary to disclose information which indicates the Government's export control intentions. In addition, where the information available to the Secretary is sufficiently unreliable to permit competent analysis, or where publication of analyses based on such information would have serious adverse consequences due to highly volatile markets for the material involved, the Committee expects the Secretary to so indicate in his report and does not expect him to proceed further with any analysis at that time.

#### *Semi-Annual Reports on Agricultural Commodities*

Section 3(b) (2) would also add a new subsection 10(c) to the Act which requires a semi-annual analysis by the Secretary of Commerce of information obtained from the Secretary of Agriculture regarding commodities subject to the reporting requirements of section 812 of the Agricultural Act of 1970. The need for careful and systematic governmental assessment of developing shortages and the long term supply and demand situation applies to agricultural as well as non-agricultural commodities. As in the analysis required by subsection 10(b), the analysis of agricultural commodities must show the impact on the economy and world trade of shortages or increased prices, for such commodities, the probable duration of such shortages or increased prices, the worldwide supply of such commodities, and actions taken by other nations in response to such shortages or increased prices.

Since agricultural commodities are a major U.S. export, such analysis is essential. The need for an embargo on soybean exports in the summer of 1973 was in part the result of a failure to foresee increased export demand for soybeans. It also reflected a failure to foresee the consequences which would follow from an abrupt termination of U.S. soybean supplies to the rest of the world, especially to established

trading partners. Increased worldwide demand for wheat in the face of dwindling carryover stocks raises similar problems. The analysis required by this subsection is intended to assist the Government in devising appropriate policies before a crisis materializes and before options short of a complete embargo are foreclosed.

To facilitate the efforts of the Secretary of Commerce this subsection makes it clear that the Secretary of Agriculture is to cooperate fully with the Secretary of Commerce in making available all the information he requires to complete the analyses.

#### *Consultation*

Section 3(c) would amend subsection 5(a) of the Act by making it clear that the consultation provisions of the Act apply to determinations regarding which exports are to be monitored, as well as to determinations concerning which exports are to be controlled.

Subsection 5(a) would also be amended to require all executive departments and independent agencies to cooperate fully in rendering advice and information to those charged with making determinations under the Act.

#### INTERNATIONAL COOPERATION TO SECURE ACCESS TO SUPPLIES

Section 4 would amend the findings and policy provisions of the Act in order to deal with the growing problems of politically and economically motivated restrictions on access to supplies. When imposed on essential raw materials such as oil, such restrictions can seriously jeopardize world-wide economic growth and political and social stability. Regardless of the material involved, such restrictions signal a breakdown in the international trading system. The purpose of this section is to recognize the dangers and to establish U.S. policy firmly in opposition to unreasonable restrictions on access to supplies and firmly in favor of international cooperation to combat such restrictions.

#### *Congressional findings*

Section 4(a) would add to section 2 of the Act a Congressional finding that unreasonable restrictions on access to supplies can cause political and economic instability, interfere with free international trade, and retard economic growth and development. The Committee expects the President and the Secretary of Commerce to take this new finding into account in implementing the Act and evaluating export restrictions imposed by United States as well as other countries. In both the imposition of export controls on U.S. materials and in responding to export controls established by other nations, the serious dangers which unreasonable export restrictions present for all nations should play an important role in the President's deliberations.

#### *U.S. cooperation with all nations*

Section 4(b) would amend section 3(3) (A) of the Act by striking the words "with which the United States has defense commitments." The purpose of this amendment is to make it United States policy to cooperate with *all* nations, not only those with which it has defense commitments, in assuring reasonable access to world supplies.

#### *Declaration of policy*

Section 4(c) would amend section 3(5) of the Act to provide that it is United States policy to foster international rules and institutions



which will assure reasonable access to world supplies by all nations. Internationally agreed-upon rules, implemented through international institutions, present the best hope for dealing with growing problems of resource scarcity. The Committee expects that earnest efforts on the part of the President and the Secretary to develop and encourage such international arrangements will form a basic part of official United States policy.

#### HIGH TECHNOLOGY EXPORTS

Section 5 would amend sections 4 and 5 of the Act in order to reduce delays in the processing of license applications for materials subject to national security export controls and to improve the functioning of the technical advisory committees.

##### *Licensing processing*

Section 5(a) would add a new subsection (g) to section 4 of the Act to require that applications for licenses to export goods and technology subject to national security controls under the Act be approved or disapproved within 90 days after submission of the application. If additional time for decision is required, the applicant must be informed of the reasons for the delay. The applicant must also be given an estimate of when a decision will be made.

This provision was added because of the increasing delays experienced by exporters seeking final action on license applications for exports of high technology goods and services. Such delays cause uncertainty, and ultimately impede United States' export potential. By requiring a decision within ninety days, with reasons to be given if additional time is required, the Committee expects the situation to be rectified.

The Committee recognizes that some improvement has been made by the Department of Commerce in the processing of export license applications. Nevertheless, the Committee is disturbed by testimony that other departments and agencies have failed to exercise their export licensing responsibilities in the inter-agency review process with adequate dispatch and that insufficient facilities and personnel are allocated to the administration of export restrictions both in the Department of Commerce and in the Department of Defense. It notes that while the volume of export license applications has risen, the number of personnel employed by the Office of Export Administration has dropped and that the number of Defense Department personnel involved in high technology export controls has remained the same. The Committee is also aware that some of the Commerce Department personnel who usually work on high technology export applications have become involved in the administration of short supply controls. It also appears that export licensing officers do not have sufficient access to computers and other management aids to expedite license applications. As a result, there are unnecessary delays in the processing of export license applications.

The Committee believes that the Department of Commerce, with the cooperation of other agencies and departments, can make further improvements in its license application procedure to ensure that decisions are made promptly and fairly and with full recognition of the burdens placed on American business by unnecessary delays in the decision-making process. The Committee directs the Secretary of Com-

merce to eliminate unnecessary delays by taking all appropriate steps, including, if necessary, the hiring of additional staff. In addition, the Secretary should bring to the attention of other Administration officials any inadequacies in other departments which contribute to delay.

#### *The Composition of Technical Advisory Committees*

Section 5(b) would amend section 5(c) (1) of the Act to make it clear that representatives of the Department of Commerce, Defense, and State, as well as other appropriate government departments and agencies should serve on the technical advisory committees established by this paragraph. The Committee believes that the statutory inclusion of these agencies is necessary since the Department of Defense and State, along with the Department of Commerce, are the major agencies involved in the formulation of national security policy.

#### *Report to Congress*

Section 5(d) would direct the Secretary of Commerce to report, within a year after the enactment of this bill, on the steps he has taken to expedite the processing of licensing applications as required by new paragraph 4(g) of the Act.

#### *Disclosure of information*

Section 5(c) would add a new paragraph to subsection 5(c) of the Act to require the Secretary of Commerce, in conjunction with other departments and agencies involved in the administration of export controls, to disclose to the technical advisory committees information on the reasons for export controls which are in effect or are contemplated for the material within each committee's purview. This amendment was adopted because the Committee received testimony that the technical advisory committees are frequently handicapped by a lack of adequate information. Without adequate information about the reasons for export controls which they are expected to review, the technical advisory committees are unable to perform fully the functions contemplated for them by the Congress. The Committee expects the Executive Branch to rectify the situation, consistent, of course, with national security considerations.

#### OPPORTUNITY TO COMMENT ON LICENSING

Section 6 would amend subsection 5(b) of the Act by adding a new paragraph which requires the Secretary of Commerce to give interested parties an opportunity to comment when export controls are imposed for short supply purposes. The provision requires the Secretary to publish his invitation to comment in the Federal Register and gives interested parties 15 days to submit written comments. The purpose is to give the Secretary, in the least cumbersome way possible, all relevant information on the impact of any export controls which he may have imposed and their method of implementation. It is expected that he will carefully review all such information and make such export control adaptations as may be indicated.

#### TECHNICAL AND CONFORMING CHANGES

Section 7 would amend redesignated subsection 4(d) of the Act (formerly subsection 4(c)) to make it clear that no special authority

is necessary to carry on export transactions unless the President has promulgated contrary regulations to implement the policies set forth in section 3 of the Act. The existing provision was defective because it did not refer to all the policy reasons for imposing export controls set forth in section 3.

#### HARDSHIP RELIEF

Section 8 would add a new section 4A which provides a procedure by which certain persons adversely affected by export controls may petition the Secretary of Commerce for exemption from controls. The intent is to provide an opportunity for relief under prescribed circumstances for persons who have historically exported materials made subject to export controls. The provision codifies existing hardship procedures under Department of Commerce regulations.

##### *Eligibility*

New subsection 4A(a) would describe those persons eligible to petition for relief. They consist of any person engaged in a domestic business which utilizes products obtained from abroad but which are made from United States materials made subject to export controls as well as all other persons who have historically exported materials subject to the controls. The need for a hardship relief opportunity may be most acute where domestic companies are deprived of critical components or materials which are historically manufactured outside the United States from commodities exported from the United States. Hardship relief may also be appropriate, however, for persons historically engaged in the export of a material made subject to controls. The particular circumstances of each case will govern, and relief may be granted only after consideration of the factors described below.

##### *Procedure*

New subsection 4A(b) would set forth the applicable procedure. Within 30 days after receiving the petition, the Secretary of Commerce is required to notify the petitioner in writing of his decision, together with a statement of reasons.

The Secretary may grant the exemption subject to any conditions he considers appropriate.

##### *Factors to be considered in granting relief*

New subsection 4A(c) would set forth the specific factors the Secretary of Commerce is expected to take into account in making his decision, in addition to any other factors he considers relevant. They are: (i) the adverse affect of the controls on domestic employment, (ii) the probability of insolvency of the petitioner due to the controls, (iii) the fact that the controls may interfere with the import of a product essential to the domestic business of the petitioner or some other party or may unduly disrupt a domestic business, (iv) the burden or adverse effect of the controls on a domestic business which manufactures in the United States a product which includes a critical component produced outside the United States from a commodity subject to controls.

#### INTERAGENCY REVIEW

Section 9 would add a new subsection 4(h) (1) to section 4 of the Act to establish review procedures for exports of goods and technology to

"controlled countries" (defined to mean Communist countries as specified in section 620(f) of the Foreign Assistance Act, except for Yugoslavia, Rumania, and Poland. This section is a modification of an amendment to the Military Procurement Authorization bill adopted by the Senate on June 11, 1974. The purpose is to insure that the Department of Defense has an adequate opportunity to consider the military and national security implications of exports to Communist countries and that the Congress has a voice in the decision in the event of White House and Department of Defense disagreement.

Paragraph (h) (1) contains a Congressional finding that the defense posture of the United States may be compromised if goods and technology are exported to controlled countries without an adequate assessment of their impact on the military capability of the recipient country. It also reinforces existing practice by specifically authorizing the Secretary of Defense to review any such proposed export and to recommend against it if he determines that it will significantly increase the military capability of such country.

Under paragraph (h) (2), the Secretary of Defense must be notified of all requests for licenses for exports to controlled countries. No license may be issued until thirty days after the Secretary of Defense has been notified and the time for Presidential and Congressional review, if applicable, has been exhausted. If the Secretary determines that the export would significantly improve the military capability of the recipient country, he must recommend to the President that he disapprove the export. Alternatively, the Secretary may notify the appropriate export control office or agency that he will interpose no objection, or that he will interpose no objection if appropriate conditions designed to achieve the purposes of the Act are imposed.

If the President notifies the administering office or agency within thirty days after receiving the recommendation of the Secretary of Defense that he disapproves the export, the export is prohibited. But, under new paragraph (h) (3), if the President modifies or overrules the Secretary of Defense, he must submit his decision to review by the Congress. Congress has a period of thirty days of continuous session of both Houses thereafter to disapprove the President's decision by majority vote.

Paragraph (h) (4) requires that in determining whether exports will significantly increase the military capability of a controlled country, the Secretary of Defense must take into account all potential end uses, not just the immediately intended use, as well as the likelihood of an end use other than that indicated by the export applicant.

Paragraph (h) (5) requires that the removal of any category of goods or technology from an export license requirement or other authorization for export to a controlled country must be approved by the President.

Paragraph (h) (6) permits the President to disagree to modifications of so-called COCOM international lists, if he determines that such modifications are likely to result in a significant increase in the military capability of any controlled country.

Paragraph (h) (7) defines the terms "goods and technology", "export control office", and "controlled country."

Paragraph (h) (8) requires the Secretary of Defense to submit a semi-annual report on the administration and implementation of this section.

## EXPORT FEES AND LICENSES

Section 10 would amend section 4 of the Act to add a new subsection (i) which authorizes the President to use license fees or the auction of export licenses as a means of carrying out the purposes of the Act. License fees and license auctioning will constitute one of the many tools available to the Secretary of Commerce when circumstances justify the imposition of export controls.

Use of license fees and auctions as a means of export control can overcome the difficulties associated with allocations under present short-supply export control programs. On the other hand, the Committee is aware that the use of license fees and auction systems can have adverse effects on small business exporters and underdeveloped nations. Therefore, the Committee wishes to stress that this new authority is permissive, not mandatory. The Committee does not intend its use where it would work a hardship on small businesses. The Committee also does not intend its use where it would deprive developing countries of access to adequate food supplies. In these, and perhaps other unique circumstances, the Secretary of Commerce should continue to rely on the existing practice of allocating export licenses among exporters and distributing export allocations on a country-by-country basis in order to insure an equitable allocation of American supplies of scarce goods throughout the world. In doing so, however, the Committee expects market prices to prevail insofar as possible.

By appropriate modification, it may be possible to use export fees and license auctioning without working such undue hardship or deprivation. In the case of small businesses, for example, a proportion of available licenses could be set aside for allocation exclusively to small businesses or a delay in the time for payment could be arranged in order to reduce any financial burden. In the case of developing countries, reduced license fees or specific exemption from any fees may be possible. In either case, before implementing a license fee or auction system, the Secretary should devise ways to satisfy the special needs of small businesses and developing countries.

The Committee is aware of the potential Constitutional problem presented by Article 1, section 9, clause 5 of the Constitution which provides that "No tax or duty shall be paid on Articles exported from any State." However, the Committee believes that a license fee or auctioning system can be structured under appropriate circumstances to avoid Constitutional infirmity. Under no circumstances are license fees or auctioning to be used as a revenue raising measures; their purpose is to provide a convenient and flexible way of administering an export control program where the Secretary determines that their use would simplify and improve export control operations. It is expected that the Secretary will take the necessary steps to minimize the possibility of Constitutional challenge.

## EXPIRATION DATE

Section 11 would extend the authority to impose export controls under the Act for three more years from July 30, 1974 to June 30, 1977.

## CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

### Export Administration

#### a. The Export Administration Act of 1969, as amended

Public Law 91-184 [H.R. 4293], 83 Stat. 841, approved December 30, 1969, as amended by Public Law 92-284 [S.J. Res. 218], 86 Stat. 133, approved April 29, 1972; and by Public Law 92-412 [S. 3726], 86 Stat. 644, approved August 29, 1972

AN ACT To provide for continuation of authority for regulation of exports

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Act of 1969".

#### FINDINGS

SEC. 2. The Congress makes the following findings:

(1) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(2) The unrestricted export of materials, information, and technology without regard to whether they make a significant contribution to the military potential of any other nation or nations may adversely affect the national security of the United States.

(3) The unwarranted restriction of exports from the United States has a serious adverse effect on our balance of payments, particularly when export restrictions applied by the United States are more extensive than export restrictions imposed by countries with which the United States has defense treaty commitments.

(4) The uncertainty of policy toward certain categories of exports has curtailed the efforts of American business in those categories to the detriment of the overall attempt to improve the trade balance of the United States.

(5) *Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.*

## DECLARATION OF POLICY

## SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States both (A) to encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest, and (B) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States.

(2) It is the policy of the United States to use export controls (A) to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of [abnormal] foreign demand, (B) to the extent necessary to further significantly the foreign policy of the United States and to fulfill its international responsibilities and (C) to the extent necessary to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States.

(3) It is the policy of the United States (A) to formulate, re-formulate, and apply any necessary controls to the maximum extent possible in cooperation with all nations [with which the United States has defense treaty commitments.] and, (B) to formulate a unified trade control policy to be observed by all such nations.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, [and] (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States, and (C) *to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.*

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular articles, materials, or supplies, including technical data or other information, to United States export controls should be subjected to review by consultation with representatives of appropriate United States Government agencies and qualified experts from private industry.

## AUTHORITY

SEC. 4. (a)(1) The Secretary of Commerce shall institute such organizational and procedural changes in any office or division of the Department of Commerce which has heretofore exercised functions

relating to the control of exports and continues to exercise such controls under this Act as he determines are necessary to facilitate and effectuate the fullest implementation of the policy set forth in this Act with a view to promoting trade with all nations with which the United States is engaged in trade, including trade with (A) those countries or groups of countries with which other countries or groups of countries having defense treaty commitments with the United States have a significantly larger percentage of volume of trade than does the United States, and (B) other countries eligible for trade with the United States but not significantly engaged in trade with the United States. In addition, the Secretary shall review any list of articles, materials or supplies, including technical data or other information, the exportation of which from the United States, its territories and possessions, was heretofore prohibited or curtailed with a view to making promptly such changes and revisions in such list as may be necessary or desirable in furtherance of the policy, purposes, and provisions of this Act. The Secretary shall include a detailed statement with respect to actions taken in compliance with the provisions of this paragraph in the second quarterly report (and in any subsequent report with respect to actions taken during the preceding quarter) made by him to the Congress after the date of enactment of this Act pursuant to section 10.

(2) The Secretary of Commerce shall use all practicable means available to him to keep the business sector of the Nation fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging the widest possible trade.

(b) (1) To effectuate the policies set forth in section 3 of this Act, the President may prohibit or curtail the exportation from the United States, its territories and possessions, of any articles, materials, or supplies, including technical data or any other information, except under such rules and regulations as he shall prescribe. To the extent necessary to achieve effective enforcement of this Act, these rules and regulations may apply to the financing, transporting, and other servicing of exports and the participation therein by any person. Rules and regulations may provide for denial of any request or application for authority to export articles, materials, or supplies, including technical data, or any other information, from the United States, its territories and possessions, to any nation or combination of nations threatening the national security of the United States if the President determines that their export would prove detrimental to the national security of the United States, regardless of their availability from nations other than any nation or combination of nations threatening the national security of the United States, but whenever export licenses are required on the ground that considerations of national security override considerations of foreign availability, the reasons for so doing shall be reported to the Congress in the quarterly report following the decision to require such licenses on that ground to the extent consideration of national security and foreign policy permit. The rules and regulations shall implement the provisions of section 3(5) of this Act and shall require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in that section must report this fact to the Secretary



of Commerce for such action as he may deem appropriate to carry out the purpose of that section.

(2) the Secretary of Commerce, in cooperation with appropriate United States Government departments and agencies and the appropriate technical advisory committees established under section 5(c), shall undertake an investigation to determine which articles, materials, and supplies, including technical data and other information, should no longer be subject to export controls because of their significance to the national security of the United States. Notwithstanding the provisions of paragraph (1), the President shall remove unilateral export controls on the export from the United States of articles, materials, or supplies, including technical data or other information, which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, except that any such control may remain in effect if the President determines that adequate evidence has been presented to him demonstrating that the absence of such a control would prove detrimental to the national security of the United States. The nature of such evidence shall be included in the special report required by paragraph (4).

(3) In conducting the investigation referred to in paragraph (2) and in taking the action required under such paragraph, the Secretary of Commerce shall give priority to those controls which apply to articles, materials, and supplies, including technical data and other information, for which there are significant potential export markets.

(4) Not later than nine months after the date of enactment of the Equal Export Opportunity Act, the Secretary of Commerce shall submit to the President and to the Congress a special report of actions taken under paragraphs (2) and (3). Such report shall contain—

(A) a list of any articles, materials, and supplies, including technical data and other information, which are subject under this Act to export controls greater than those imposed by nations with which the United States has defense treaty commitments, and the reasons for such greater controls; and

(B) a list of any procedures applicable to export licensing in the United States which may be or are claimed to be more burdensome than similar procedures utilized in nations with which the United States has defense treaty commitments, and the reasons for retaining such procedures in their present form.

(c) (1) *To effectuate the policy set forth in section 3(2) (A) of this Act, the Secretary of Commerce shall monitor exports, and contracts for exports, of any article, material, or supply (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970)*

*when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase, or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.*

(2) *The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with re-*

spect to each article, material, or supply monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(d) Nothing in this Act or the rules or regulations thereunder shall be construed to require authority or permission to export, except where required by the President to effect the policies set forth in section 3 of this Act.

(e) The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may deem appropriate.

(f) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by him to be in excess of the requirements of the domestic economy, except to the extent the President determined that such exercise of authority is required to effectuate the policies set forth in clause (B) or (C) of paragraph (2) of section 3 of this Act.

(g) Any export license application required by the exercise of authority under this Act to effectuate the policies of section 3(1)(B) or 3(2)(C) shall be approved or disapproved not later than 90 days after its submission. If additional time is required, the Secretary of Commerce or other official exercising authority under this Act shall inform the applicant of the circumstances requiring such additional time and give an estimate of when his decision will be made.

(h) (1) The Congress finds that the defense posture of the United States may be seriously compromised if the Nation's goods and technology are exported to a controlled country without an adequate and knowledgeable assessment being made to determine whether export of such goods and technology will significantly increase the military capability of such country. It is the purpose of this section to provide for such an assessment and to authorize the Secretary of Defense to review any proposed export of goods or technology to any such country and, whenever he determines that the export of such goods or technology will significantly increase the military capability of such country, to recommend to the President that such exports be disapproved.

(2) Notwithstanding any other provision of law, whenever a request for a license or other authority is required by any person to export any goods or technology to any controlled country, the appropriate export control office or agency to whom such request is made shall notify the Secretary of Defense of such request, and such office may not issue any license or other authority pursuant to such request prior to the expiration of the period within which the President may disapprove such export, or prior to the expiration of the period within which the Congress may disapprove an action of the President, if applicable. The Secretary of Defense shall carefully consider all notifications submitted to him pursuant to this subsection and, not later than 30 days after notification of the request, shall—

(A) recommend to the President that he disapprove any request for the export of any goods or technology to any controlled

country if he determines that the export of such goods or technology will significantly increase the military capability of such country;

(B) notify such office or agency that he will interpose no objection if appropriate conditions designed to achieve the purposes of this Act are imposed; or

(C) indicate that he does not intend to interpose an objection to the export of such goods or technology.

If the President notifies such office or agency, within thirty days after receiving a recommendation from the Secretary, that he disapproves such export, no license or other authorization may be issued for the export of such goods or technology to such country.

(3) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense pursuant to this section, the President shall submit to the Congress a statement indicating his decision. The Congress shall have a period of thirty calendar days of continuous session of both Houses after the date on which the statement is transmitted to the Congress to disapprove, by majority vote of both Houses, the action of the President.

(4) In determining whether the export of any goods or technology to any controlled country will significantly increase the military capability of such country, the Secretary of Defense shall take into account all potential end uses, and the likelihood of an end use other than the end use indicated by the applicant for the export of such goods or technology.

(5) Effective on July 1, 1974, the removal of any category of goods or technology requiring an export license or other authorization shall require the approval of the President.

(6) The President is authorized, on behalf of the United States, to disagree to any modification of the so-called COCOM international lists (or interpretations thereof) if he determines that such modification would likely result in a significant increase in the military capability of any controlled country.

(7) As used in this section—

(A) the term "goods and technology" includes but is not limited to—

(i) machinery, equipment, durable goods, and computer software;

(ii) any license or other arrangement for the use of any patent, trade secret, design, or plan;

(iii) the so-called know-how or knowledge of any individual, firm, corporation, or other entity;

(iv) assistance in planning and joint venture arrangements; and

(v) arrangements under which assistance is provided in developing a manufacturing capability, including so-called turnkey arrangements;

(B) the term "export control office" means any office or agency of the United States Government whose approval or permission is required pursuant to existing law for the export of goods or technology; and

(C) the term "controlled country" means a Communist country as defined in section 620(f) of the Foreign Assistance Act of 1961, except for Yugoslavia, Rumania, and Poland.

(8) The Secretary of Defense shall submit to the Congress every six months a report on the implementation and administration of this section.

(i) In imposing export controls to effectuate the policy stated in section 3(2)(A) of this Act, the President's authority shall include, but not be limited to, the imposition of export license fees and the auction of export licenses.

#### PROCEDURES FOR HARDSHIP RELIEF FROM EXPORT CONTROLS

SEC. 4A. (a) Any person who, in his domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a commodity historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a commodity, may transmit a petition of hardship to the Secretary of Commerce requesting an exemption from such controls in order to alleviate any hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary of Commerce shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) Not later than 30 days after receipt of any petition under subsection (a), the Secretary of Commerce shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary deems appropriate.

(c) For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from hardship resulting directly or indirectly from the imposition of controls shall reflect the Secretary's consideration of such factors as—

(1) the adverse effect on employment within a region or locality of the United States;

(2) the probability of insolvency of the petitioner;

(3) any interference with the importation of a product which is essential to the petitioner's or other domestic business or which causes undue disruption of the petitioner's or other domestic business;

(4) any burden or other adverse effect such controls impose on a domestic business concern which manufactures or assembles a product which includes a critical component produced outside of the United States in whole or in part from a commodity subject to the controls; and

(5) any other factors which the Secretary deems relevant.

#### CONSULTATION AND STANDARDS

SEC. 5. (a) In determining what shall be controlled [hereunder] or monitored under this Act, and in determining the extent to which exports shall be limited, any department, agency, or official making these determinations shall seek information and advice from the several executive departments and independent agencies concerned with aspects

of our domestic and foreign policies and operations having an important bearing on exports. *Such departments and agencies shall fully cooperate in rendering such advice and information.* Consistent with considerations of national security, the President shall from time to time seek information and advice from various segments of private industry in connection with the making of these determinations.

(b) (1) In authorizing exports, full utilization of private competitive trade channels shall be encouraged insofar as practicable, giving consideration to the interests of small business; merchant exporters as well as producers, and established and new exporters, and provision shall be made for representative trade consultation to that end. In addition, there may be applied such other standards or criteria as may be deemed necessary by the head of such department, or agency, or official to carry out the policies of this Act.

(2) *Upon imposing quantitative restrictions on exports of any article, material, or supply to carry out the policy stated in section 3(2) (a) of this Act, the Secretary of Commerce shall publish a notice in the Federal Register inviting all interested parties to submit written comments within fifteen days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.*

(c) (1) Upon written request by representatives of a substantial segment of any industry which produces articles, materials and supplies, including technical data and other information, which are subject to export controls or are being considered for such controls because of their significance to the national security of the United States, the Secretary of Commerce shall appoint a technical advisory committee for any grouping of such articles, materials, and supplies, including technical data and other information, which he determines is difficult to evaluate because of questions concerning technical matters, worldwide availability and actual utilization of production and technology, or licensing procedures. [Each such committee shall consist of representatives of United States industry and government.] *Each such committee shall consist of representatives of United States industry and government, including the Departments of Commerce, Defense, and State, and when appropriate, other government departments and agencies.* No person serving on any such committee who is representative of industry shall serve on such committee for more than two consecutive years.

(2) It shall be the duty and function of the technical advisory committees established under paragraph (1) to advise and assist the Secretary of Commerce and any other department, agency, or official of the Government of the United States to which the President has delegated power, authority, and discretion under section 4(d) with respect to actions designed to carry out the policy set forth in section 3 of this Act. Such committees shall be consulted with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to any articles, materials, or supplies, including technical data or other information, and including those whose export is subject to multilateral controls undertaken with nations with which the United States has

defense treaty commitments, for which the committees have expertise. Such committees shall also be consulted and kept fully informed of progress with respect to the investigation required by section 4(b)(2) of this Act. Nothing in this subsection shall prevent the Secretary from consulting, at any time, with any person representing industry or the general public regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary of Commerce, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if he determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by him in connection with his duties as a member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the Chairman, unless the Chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this Act. Each such committee shall be terminated after a period of two years, unless extended by the Secretary for additional periods of two years. The Secretary shall consult each such committee with regard to such termination or extension of that committee.

*(5) To facilitate the work of the technical advisory committees, the Secretary of Commerce, in conjunction with other departments and agencies participating in the administration of this Act, shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the grouping of articles, materials, and supplies with respect to which that committee furnishes advice.*

#### VIOLATIONS

SEC. 6. (a) Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than \$10,000 or imprisoned not more than one year, or both. For a second or subsequent offense, the offender shall be fined not more than three times the value of the exports involved or \$20,000, whichever is greater, or imprisoned not more than five years, or both.

(b) Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any Communist-dominated nation, shall be fined not more than five times the value of the exports involved or \$20,000, whichever is greater, or imprisoned not more than five years, or both.

(c) The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed \$1,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed.

(d) The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege

granted or to be granted to the person upon whom such penalty is imposed.

(e) Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty, within two years after payment, on the ground of a material error of fact or law in the imposition. Notwithstanding section 1346(a) of title 28 of the United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) Nothing in subsection (c), (d), or (f) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit, or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

#### ENFORCEMENT

SEC. 7. (a) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (27 Stat. 443; 49 U.S.C. 46) shall apply with respect to any individual who specifically claims such privilege.

(c) No department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest.

(d) In the administration of this Act, reporting requirements shall be so designated as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology. A detailed statement with respect to any action taken in compliance with this subsection shall be included in the first quarterly report made pursuant to section 10 after such action is taken.

#### EXEMPTION FROM CERTAIN PROVISIONS RELATING TO ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 8. The functions exercised under this Act are excluded from the operation of sections 551, 553-559, and 701-706, of title 5, United States Code.

#### INFORMATION TO EXPORTERS

SEC. 9. In order to enable United States exporters to coordinate their business activities with the export control policies of the United States Government, the agencies, departments, and officials responsible for implementing the rules and regulations authorized under this Act shall, if requested, and insofar as it is consistent with the national security, the foreign policy of the United States, the effective administration of this Act, and requirements of confidentiality contained in this Act—

- (1) inform each exporter of the considerations which may cause his export license request to be denied or to be the subject of lengthy examination;
- (2) in the event of undue delay, inform each exporter of the circumstances arising during the Government's consideration of his export license application which are cause for denial or for further examination;
- (3) give each exporter the opportunity to present evidence and information which he believes will help the agencies, departments, and officials concerned to resolve any problems or questions which are, or may be, connected with his request for a license; and
- (4) inform each exporter of the reasons for a denial of an export request.



# QUARTERLY REPORT

SEC. 10. (a) The head of any department or agency, or other official exercising any functions under this Act, shall make a quarterly report, within forty-five days after each quarter, to the President and to the Congress of his operations hereunder.

(b) (1) *The quarterly report required for the first quarter of 1975 and every second report thereafter shall include summaries of the information contained in the reports required by section 4(c)(2) of this Act, together with an analysis by the Secretary of Commerce of (A) the impact on the economy and world trade of shortages or increased prices for articles, materials, or supplies subject to monitoring under this Act, (B) the probable duration of such shortages or increased prices, (C) the worldwide supply of such articles, materials, and supplies, and (D) actions taken by other nations in response to such shortages or increased prices.*

(2) *Each such quarterly report shall also contain an analysis by the Secretary of Commerce of (A) the impact on the economy and world trade of shortages or increased prices for commodities subject to the reporting requirements of section 812 of the Agricultural Act of 1970, (B) the probable duration of such shortages or increased prices, (C) the worldwide supply of such commodities, and (D) actions being taken by other nations in response to such shortages or increased prices. The Secretary of Agriculture shall fully cooperate with the Secretary of Commerce in providing all information required by the Secretary of Commerce in making such analysis.*

## DEFINITION

SEC. 11. The term "person" as used in this Act includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof.

## EFFECT ON OTHER ACTS

SEC. 12. (a) The Act of February 15, 1936 (49 Stat. 1140), relating to the licensing of exports of tinplate scrap, is hereby superseded; but nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934).

## EFFECTIVE DATE

SEC. 13. (a) This Act takes effect upon the expiration of the Export Control Act of 1949.

(b) All outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action under the Export Control Act of 1949 or section 6 of the Act of July 2, 1940 (54 Stat. 714); shall, until amended or revoked, remain in full force and effect, the same as if promulgated under this Act.

## TERMINATION DATE

Sec. 14. The authority granted by this Act terminates on June 30, **[1974]** 1977, or upon any prior date which the Congress by concurrent resolution or the President by proclamation may designate.

